

Use Attainability Analysis

- The designated use of a water body may be changed only if it is documented that the use is not attainable. This documentation is called a use attainability analysis (UAA).
- A UAA is a structured scientific assessment of the beneficial uses a water body can support. The analysis needs to identify the highest use the water body in questions can attain given application of required effluent limits and implementation of cost-effective and reasonable best management practices. This can be difficult and contentious.
- In no case may a use that currently exists, or has existed since Nov. 25, 1975, be removed or downgraded.
- Furthermore, the CWA requires that the existing use become the designated use, or the water's designation upgraded, for waters whose existing use is better than currently designated.
- Federal Regulations (40CFR 131.10(g)) allows only six reasons for changing a use designation:
 - 1) Naturally occurring pollutant levels prevent attainment;
 - 2) Natural ephemeral, intermittent, or low flow prevents attainment;
 - 3) Human caused pollution prevents attainment and cannot be remedied without causing worse environmental harm;
 - 4) Dams, diversions, and other hydrologic modifications prevent attainment and it is not feasible to restore the water or operate the modification in a way that would result in attainment;
 - 5) Natural physical features prevent attainment;
 - 6) Attainment requires controls more stringent than effluent limitations or new source performance standards and these extraordinary controls would result in substantial and widespread social and economic hardship.
- Any proposed use change requires rulemaking to be put in place and must include opportunity for public comment.
- Use changes are subject to EPA review and approval before being effective for CWA purposes (discharge permits, total maximum daily loads, 303(d) listing decisions).
- A UAA is required anytime a state or tribe designates a use that does not include the "fishable – swimmable" goals of the CWA or changes a use to one that would apply less stringent criteria.
- Experience is that UAAs are costly and time consuming. In addition to documenting the existing uses, a UAA must also determine the uses that are attainable, with pollution control.
- Because the directive of the CWA is to restore and maintain the integrity of the nation's waters, use changes are treated with great circumspection – the standard or proof is high.